

UNITED STATES GOVERNMENT

Memorandum

RAILROAD RETIREMENT BOARD

April 18, 1986

L-86-57

TO : Director of Compensation and Certification

FROM : Deputy General Counsel

SUBJECT: Mississippi Delta Railroad
Gulf & Ohio Railways
Employer Status

This is in response to your Form G-215 inquiry of January 31, 1986, requesting my opinion regarding the employer status of the Mississippi Delta Railroad (MDR). Evidence contained in the file indicates that MDR is a division of Gulf & Ohio Railways (G&O). Neither MDR nor G&O has previously been held to be an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

In a letter dated January 13, 1986, Mr. Pete Claussen, President of MDR, stated that MDR is "a division of" G&O and operates 50 miles of trackage, with the line running south from Lula, Mississippi to Clarksdale, Mississippi and then southeast to Swan Lake, Mississippi. The line interchanges with the Illinois Central Gulf Railroad (ICG) at Swan Lake. According to the Interstate Commerce Commission (I.C.C.) decision, which Mr. Claussen enclosed with his letter of January 13, 1986, G&O is "a non-carrier corporation organized under the laws of Tennessee", which has acquired the trackage from Lula to Lyon, Mississippi (approximately 18.6 miles) from the ICG and has leased from the ICG the line of railroad between Lyon and Clarksdale and between Clarksdale and Swan Lake, Mississippi (approximately 33.88 miles). The I.C.C. decision stated that G&O would "operate these lines through a corporate division called the Mississippi Delta Railroad".^{1/} See I.C.C. Decision Finance Docket No. 30683, decided October 16, 1985. In his letter of January 13, 1986, Mr. Claussen stated that MDR began operations on December 31, 1985, and employees were first compensated on January 10, 1986.

In response to an inquiry from a member of my staff, Mr. Claussen stated in a letter dated March 14, 1986, that he is the chief executive officer of G&O, which is "a Subchapter S corporation formed for the purpose providing [sic] a corporate entity through

^{1/} According to a letter from Mr. Claussen dated April 5, 1986, "The Mississippi Delta Railroad is unincorporated. All of it's [sic] assets are owned by Gulf & Ohio Railways."

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which my railroad interests would be held."^{2/} Mr. Claussen further stated that "G&O owns the Mississippi Delta Railroad. In the future, it may own other railroad properties or interests therein."^{3/} Mr. Claussen also stated that although G&O has no employees, as the owner of G&O Mr. Claussen provides "overall direction to the General Manager of the Mississippi Delta Railroad." Finally, Mr. Claussen explained that the 6 employees of MDR are paid by that company, not by G&O.

Based on the above, I conclude that the Mississippi Delta Railroad became an employer under the Railroad Retirement Act and the Railroad Unemployment Insurance Act effective December 31, 1985, the date on which it began actual railroad operations. Furthermore, it is my opinion that inasmuch as the entire business of Gulf & Ohio Railways as described by Mr. Claussen consists of owning the Mississippi Delta Railroad and Mr. Claussen himself in his capacity as chief executive officer of G&O, provides overall direction to the General Manager of the MDR, clearly services directly connected with railroad transportation, G&O is also an employer under the Acts effective December 31, 1985, the date on which the Mississippi Delta Railroad began actual railroad operations.

^{2/} According to the I.C.C. Decision, Mr. Claussen "will be president, director and controlling shareholder of G&O. He is currently president, director, and minority shareholder of the Caney Fork and Western Railroad, Inc. (Caney Fork), a carrier operating in eastern Tennessee."


^{3/} Regarding the Caney Fork, one of Mr. Claussen's other railroad interests, the I.C.C. found that Mr. Claussen has an equity interest of 5.8% in the Caney Fork, serves as one of five directors, is president but acts only in accordance with guidelines established by the board of directors, does not have a management contract and can accordingly be relieved of his duties at any time by the board of directors. Therefore, the I.C.C. did "not find him to be in control of that railroad". It should be noted that according to the Board's file, Mr. Claussen is President and Chief Executive Officer of the Caney Fork. The Caney Fork was found to be an employer under the Acts effective December 27, 1983 (See Legal Opinion L-84-64).

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An appropriate Form G-215 giving effect to the foregoing is attached.


Steven A. Bartholow

Attachment


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